IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
October 15, 2003

STATE OF TENNESSEE v. SHANNON MAYES

Direct Appeal from the Circuit Court for Wayne County
No. 12596 Robert L. Holloway, Judge

No. M2002-02091-CCA-R3-CD - Filed January 12, 2004

The appellant, Shannon Mayes, was convicted by a jury of first degree murder and sentenced to life in prison. The appellant appealed after the denial of his motion for new trial. The following issues are presented for our review: (1) whether the trial court erred in admitting the victim's dying declaration into evidence; and (2) whether the evidence was sufficient to convict the appellant of first degree murder. After a review of the record, we find no reversible error and, therefore, affirm the decision of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID G. HAYES and THOMAS T. WOODALL, JJ., joined.

Gregory D. Smith, Clarksville, Tennessee, for the appellant, Shannon Mayes

Paul G. Summers, Attorney General & Reporter; P. Robin Dixon, Jr., Assistant Attorney General; Mike Bottoms, District Attorney General; and J. Douglas Dicus, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

Gary Mayes, the appellant's uncle, was a well-known store owner in Wayne County. People often referred to Mr. Mayes as "Bigun" due to his large stature. Throughout his teenage years, the appellant worked off and on at his uncle's store. However, there was a history of tension between the two, and the appellant quit working for his uncle during the fall of 2000, when he was eighteen years old. Many people in the community also knew that Mr. Mayes carried large sums of money

home from his store, and that Mr. Mayes was almost never seen without his pistol, a .44 magnum Ruger Super Black Hawk.

Shortly before midnight on April 14, 2001, Mr. Mayes left his store with Robert Kent, a friend and employee. Mr. Mayes left the store carrying a bag, some ice cream, tobacco, and a gun. Mr. Mayes drove Mr. Kent home that night after work and then proceeded to his own residence.

Joel Todd, Mr. Mayes's neighbor, fell asleep on his couch that night after watching a "ball game." Awakened by barking dogs, Mr. Todd went to the front door and turned on the carport light, but saw nothing unusual. He turned off the light and went back to the couch. About ten or fifteen minutes later, however, Mr. Todd heard six or seven gunshots at Gary Mayes's house. He called 911. Mr. Todd knew that Mr. Mayes often carried large amounts of money and a pistol. Mr. Todd could tell that more than one gun was fired and could identify the different weapons because one shot sounded "mushy," while the other made a ringing-type sound. About fifteen minutes after hearing the gunshots, Mr. Todd heard a knock at the door. The appellant identified himself and told Mr. Todd that he had been shot. Mr. Todd opened the door and asked the appellant what happened. The appellant stated that he "got into it" with his uncle, Mr. Mayes, and that "he started shooting me, so I shot him" with a 20-gauge shotgun. The appellant was wearing a camouflage shirt, shorts and a rubber glove on his right hand. He was not wearing pants or shoes. He had a hole in his left leg, just below the knee and appeared to be wounded in the right arm.

Gerald Henderson, a police officer for Clifton, Tennessee, was dispatched to Mr. Todd's residence in response to a report of gunshots. Upon arriving at the residence, Officer Henderson saw the appellant lying down in the doorway to the residence with a blood-soaked towel wrapped around his left leg and a gunshot wound to his right arm. The appellant was wearing shorts, a shirt, and a rubber glove on one hand. He was not wearing shoes. The appellant told Officer Henderson that Mr. Mayes shot him and that he shot back. Officer Henderson then proceeded to Mr. Mayes's house where he found Mr. Mayes lying in the carport in the fetal position between his truck and house. There was a large handgun laying next to him and blood everywhere.

Officer Henderson asked Mr. Mayes what happened, and he was able to tell him that someone came from behind the house and shot him. He was unable to name the shooter. Mr. Mayes had a five-to-six inch hole in his abdomen from the gunshot wounds and a wound to one of his hands and one of his legs. Officer Henderson went to his vehicle to call for emergency personnel and discovered a ski mask toboggan, a pair of tennis shoes, an 870 Remington shotgun, camouflage pants, a rubber glove turned inside out, and a spent shotgun shell. Mr. Mayes then told Officer Henderson that the "son of a bitch" was wearing camouflage and a ski mask toboggan and stepped from behind the house, pointed a shotgun at him and fired. Mr. Mayes told Officer Henderson that his injuries were "killing" him. By the time emergency personnel arrived on the scene, Officer Henderson could see no signs of life in Mr. Mayes. Mr. Mayes was pronounced dead on arrival at Wayne County General Hospital. According to the medical examiner, he died as a result of multiple shotgun wounds that were sustained at a distance of six to nine feet.

James Berry, a deputy with the Wayne County Sheriff's Department arrived at Mr. Todd's residence sometime after 1:00 a.m. and found the appellant lying in the doorway wearing a camouflage shirt, a pair of shorts, white socks, and a rubber glove on his hand. The appellant told Deputy Berry that he "just had it [the rubber glove] on." Deputy Berry followed a blood trail from Mr. Todd's home to Mr. Mayes' home. Along the blood trail, Deputy Berry found another rubber glove. The blood along the trail was later identified as that of the appellant.

The appellant was transported via ambulance to Wayne County General Hospital and air-lifted to Vanderbilt where he underwent surgery for his wounds and remained in the hospital for approximately one week.

Deputy Steve Wilson, an investigator with the Wayne County Sheriff's Department, was also dispatched in response to the call that shots were fired on Williams Hollow Road. He recovered various items from Mr. Mayes's residence, including a rubber glove which was turned inside-out, a 20-gauge shotgun, three spent shotgun shells, camouflage pants, a ski mask, tennis shoes and a large brown bag containing over $4,000. The ski mask and the rubber glove both had blood on them. Deputy Wilson recovered a knife, a chain, and a large sum of money from Mr. Mayes's person. On April 16, 2001, Mr. Wilson interviewed the appellant and took a statement from him at Vanderbilt Medical University Hospital. The statement reads as follows:

> I worked for my Uncle Gary at [sic] store and other things since I was sixteen years old. Mostly at the store. I worked there just before December of last year, 2000. My grandfather, Walter, was real sick having crazy spells. All the kids and family was [sic] going to have a meeting at Bigun's store about Walter to decide what to do with him. Ronnie didn't show. Aunt Virginia didn't show. Papa called mom to come. Me and John took Papa home to eat. While we were gone, Mom, Diane, and Gary [got] into an argument. Mom told me that it was because Gary got on to me. I was leaving, Gary pushed me in the parking lot. My brother John came up and got in between us. I left. That is when we first got into it and been into it ever since. I quit that day. Gary accused me of stealing money from the store about a week later. This was in December of 2000. Me and Gary have talked since then. Gary, Bigun, has told me he hates me. A couple of weeks ago I talked to Bigun at his store. We didn't get along. He said he hated people who stole money from him. Bigun accused me several times of selling drugs out of his store. I quit once because of that a long time ago. He has tried to kick me out of Papa's house before. This past Saturday, April the 14th, 2001, I babysat John's boy a little while that evening. John was in Jackson with [his] mother-in-law. I watched his boy. John came home Saturday night about 9:30 p.m. or 10:00 p.m. I left about as soon as John and Candy got there. I was driving my truck, S-10 4x4, gray. I went to Walter's house. I stopped at Bigun's store, got some Mello Yellow and a pack of cigarettes. I talked to Bigun there in the store. Bigun was telling me how I needed to straighten up. He was telling me what to do. Bigun was complaining about John, my brother, and how he needed to straighten up. The way he talked to me Saturday night made me real mad. Bigun

was cussing. Bigun was always trying to run my life. I really didn't say anything to Bigun. I was trying to leave. Bigun just kept on and on saying how I needed to do things right calling me worthless and stuff. He said if I would treat him right, he would treat me right. I worked for him three years for $5.25 an hour, never got a raise. I finally got to leave. I told him I was leaving. It was about fifteen till 11:00 p.m. I left Biguns and went to Bigun's house in my truck, the S-10 4x4. I parked in front of Joel Todd's house on the side of the road. This was about fifteen after 12:00, midnight. I had rode around for a while and had went to Walter's house. There was a half case of beer in [the] truck, but I did not drink anything Saturday night. I got out of my truck. I got my shotgun, a twenty gauge pump. I was wearing camo pants and camo t-shirt. I didn't have the toboggan on. It was in my pocket. I was going down to Bigun's porch to wait on him to get home so I could talk to him. I carried my shotgun because Bigun always carried that big gun. I went down to Bigun's and waited [on] him. I was on the porch when Bigun got home in his white Ford truck. When Bigun got out of his truck he told me to leave that I wasn't welcome at his house. Bigun said he didn't like people who stole from him. I had laid my shotgun beside the porch. Big was holding a big bag, his gun and his keys. Bigun was cussing and screaming. I told him if that is the way he was going to be I didn't have to have nothing to do with him. I picked up my shotgun. Bigun was cussing. I was standing in the grass in front of the truck. Bigun was beside his truck door. That is when I told him I didn't want nothing to do with him anymore. He was cussing. Bigun shot at me. I don't think Bigun meant to hit me. He was telling me to get the hell out of his yard. I think that is when I got hit in the leg. I felt the sting. I turned and shot Bigun. I think I hit him in the stomach. Bigun fired again and hit me in the right arm and shot at me two more times. I ran to the edge of the porch on the passenger's side of his truck. I was hiding behind [the] pillar. Bigun was lying on the ground beside his truck. That is when he shot at me two more times. I fired two shots. One shot, I shot at Gary under the truck. The second shot in his direction, I don't think I hit anything. I could see Gary's feet. I saw him role [sic] over on his side and face the wall. I seen his gun lying beside him. I was sure he wasn't going to shoot at me again. That is when I got up and started to Joel's house. I had put one glove on my right hand. It was a rubber glove. I put this glove on my right-hand when Gary and I first got into it in front of his truck. I put the glove on just in case something happened. That's when - - That's when he shot at me the first time. The other glove I didn't have time to put on. I thought I dropped the other glove in the yard at Bigun's before I left to go to Joel's house. I took my camo pants off to see how bad I was hurt. I took off my shoes too. I guess the toboggan was lying there with the other stuff at the porch. I walked to Joel's and knocked on the door with my head. Joel came to the door. I told Joel that I had shot Bigun and that Bigun had shot me to call me an ambulance. Joel said he already did. I laid in the door at Joel's until the ambulance got there and remember the helicopter ride. This is my statement given to Investigator Steve Wilson. I am clear minded and understand completely what I have told Investigator Wilson and that it is the truth. I asked Investigator

Wilson to write my statement and I have read this statement and it bares my signature.

At trial, however, the defendant testified that his statement was not entirely accurate. At trial, he claimed that after babysitting for his brother, John, he went to the home he shared with his grandfather to get "stuff" ready to go coyote hunting the next morning. While he was home, his grandfather "got a chemical imbalance in his head." The appellant went to get help from Mr. Mayes because he did not want to send his grandfather to the hospital without telling anyone. He parked in front of Mr. Todd's house, over 200 yards away, because he was afraid Mr. Mayes might try to "whoop" him. He took his shotgun, which was loaded from a prior hunting trip, "just in case." He waited on Mr. Mayes's porch for about ten minutes for him to arrive. Mr. Mayes asked him why he was there, and the appellant told him that his grandfather was "saying crazy stuff." He did not seek help from his brother because he had been in Jackson all night visiting his mother-in-law. The appellant asked Mr. Mayes if he would stay with the grandfather the next day. He also accused Mr. Mayes of not giving the grandfather his medicine. Mr. Mayes did not feel this was any of the appellant's business. The appellant stated that at that point, he picked up his shotgun and began to leave when Mr. Mayes began screaming and cussing. The appellant told Mr. Mayes that he was going to leave and that he only came to get his grandfather some help, but that when he turned around, Mr. Mayes shot him in the leg. The appellant fired a shot at Mr. Mayes and "took off running." Mr. Mayes fired two more shots, one of them hitting the appellant in the arm, before the appellant was able to hide behind a column in the carport. By this point, Mr. Mayes was down on the floor of the carport. The appellant fired two more shots at him and Mr. Mayes again returned fire. The appellant then took off his pants and shoes to see the extent of his injuries. He thought that the toboggan probably fell out his pants pocket. He could hear Mr. Mayes moving around. He took off towards Mr. Todd's house to get help. When he arrived, he told Mr. Todd that he had just been shot and that he shot Mr. Mayes.

On cross-examination, the appellant claimed that he was "out of it" when he gave the statement to Deputy Wilson because he was under the influence of morphine and that he did not remember receiving his Miranda rights. He acknowledged, however, that he did not mention the situation regarding his grandfather in his statement to Deputy Wilson. He stated that he brought the gloves with him to Mr. Mayes's because one of his hunting dogs, which were kept at his brother John's house, was supposed to have puppies that night. He explained that he was planning on going back to his brother's house sometime that night so that he and his brother could check on the dog. John Mayes testified that one of the dogs did indeed have puppies that night, but that he was unaware of the appellant's plan to return to his house to check on the dog. John Mayes also admitted that the 20-gauge shotgun belonged to him, that he had not given the appellant permission to use the gun, and that he did not know how long the appellant had possession of the gun prior to the incident.

Several friends of Mr. Mayes and the appellant testified at trial. Timothy Lambert, Mr. Mayes's friend, was at the store that night from about 10:30 p.m. until midnight. He did not see the appellant. David Hill, the appellant's friend, recalled an argument between Mr. Mayes and the appellant. He also remembered that approximately one month prior to the incident, the appellant

needed money to prevent his truck from being repossessed. Several other people testified that the appellant was in need of money. Lisa Cox, who was friends with Mr. Mayes and the former girlfriend of the appellant, recalled an argument about two weeks prior to the incident in which Mr. Mayes told the appellant to get a job, and the appellant threatened to kill Mr. Mayes. Garla Hill testified that the appellant owed Mr. Mayes money.

Introduction of the Dying Declaration

The appellant filed a motion in limine in which he sought to exclude "certain statements made by the alleged victim shortly before his death to Officer Gerald Henderson" as hearsay. After a hearing, the trial court denied the motion. At trial, the evidence was admitted through the testimony of Officer Henderson, and the appellant did not object. Although not raised by either party on appeal, we feel compelled to ascertain at the outset whether the appellant waived his right to appeal this issue by failing to object to the introduction of the testimony at trial. We conclude that the trial court's ruling on the motion in limine was sufficiently clear such that the appellant need not renew his objection to the testimony at trial. See Goines v. State, 572 S.W.2d 644, 649 (Tenn. 1978); State v. Alejandro Rivera, No. E2002-00491-CCA-R3-CD, 2003 WL 22843170, at *19 (Tenn. Crim. App. at Knoxville, Dec. 1, 2003); State v. Joe A. Gallaher, No. E2001-01876-CCA-R3-CD, 2003 WL 21463017, at *2 (Tenn. Crim. App. at Knoxville, June 25, 2003).

On appeal, the appellant argues that the trial court erred by allowing Mr. Mayes's dying declaration to come into evidence. Specifically, he argues that because the evidence was not "clear" or "absolute" that the victim believed that death was "just around the corner," the statements should have been excluded. The State counters that "because the victim stated that he was dying and died several minutes later" the trial court did not err in admitting the dying declaration.

Tennessee Rule of Evidence 804(b)(2) enumerates the circumstances that allow for the introduction of statements made "under belief of impending death," otherwise known as dying declarations. "In a prosecution for homicide, a statement made by the victim while believing that the declarant's death was imminent and concerning the cause or circumstances of what the declarant believed to be impending death" is admissible despite being ordinarily considered hearsay. Tenn. R. Evid. 804(b)(2). In other words, a dying declaration has five elements:

> (1) The declarant must be dead at the time of the trial;
> (2) the statement is admissible only in the prosecution of a criminal homicide;
> (3) the declarant must be the victim of the homicide;
> (4) the statement must concern the cause or the circumstances of the death; and
> (5) the declarant must have made the statement under the belief that death was imminent.

State v. Hampton, 24 S.W.3d 823, 828 -29 (Tenn. Crim. App. 2000). The last requirement provides the indicia of reliability and truth that justifies admission of the statement. See Neil P. Cohen, et al., Tennessee Law of Evidence, § 835(2) (4th ed. 2000). The burden is on the proponent of the hearsay

statement to justify its admission as an exception to the hearsay rule of exclusion by proving the existence of the preliminary facts by a preponderance of the evidence. See State v. Stamper, 863 S.W.2d 404, 405 (Tenn. 1993). If the trial court finds that it is more probable than not that the preliminary facts exist, the evidence is admissible.

In the case herein, the record reveals that the trial court allowed Officer Henderson to testify that Mr. Mayes made the following statements as he lay bleeding on the floor of his carport: "The son of a bitch stepped out from behind the house, pointed a shotgun and fired. He was wearing camouflage and I don't know who it was. This is killing me. I'm hurting bad." This statement was allegedly uttered shortly before Mr. Mayes died from his wounds.

During the pre-trial hearing on the appellant's motion to suppress this statement, the trial court ruled that the statement was admissible under the dying declaration exception in Tennessee Evidence Rule 804(b)(2). As a basis for its ruling, the trial court specifically found that the State met the burden of showing an exception to the hearsay rule based on the imminent fear of death of the declarant.

Our standard of review for a trial court's findings of fact and conclusions of law on a motion to suppress evidence is set forth in State v. Odom, 928 S.W.2d 18 (Tenn. 1996). Under this standard, "a trial court's findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise." Id. at 23. Questions of witness credibility, the weight and value of evidence, and resolution of conflicts in the evidence are entrusted to the trial court as the trier of fact. Id. As is customary, "the prevailing party in the trial court is afforded the 'strongest legitimate view of the evidence and all reasonable and legitimate inferences that may be drawn from that evidence.'" State v. Carter, 16 S.W.3d 762, 765 (Tenn. 2000) (quoting State v. Keith, 978 S.W.2d 861, 864 (Tenn. 1998)). Nevertheless, this Court reviews de novo the trial court's application of the law to the facts, without according any presumption of correctness to those conclusions. See State v. Walton, 41 S.W.3d 775, 81 (Tenn. 2001); State v. Crutcher, 989 S.W.2d 295, 299 (Tenn. 1999).

The appellant argues that, under State v. Hampton, 24 S.W.3d 823 (Tenn. Crim. App. 2000), in order for a statement to qualify as a dying declaration, the declarant must have "had a fixed and certain belief that death was inevitable and near at hand" because "simply believing a person is in danger of dying is not enough to qualify for the dying declaration exception to the hearsay rule." We disagree. This Court has previously held that it is not necessary that the declarant state unequivocally a belief that death is imminent. State v. Maruja Paquita Coleman, No. 01C01-9401-CR-00029, 1997 WL 438169, at *5 (Tenn. Crim. App. at Nashville, July 31, 1997); see also State v. Robert Earl Johnson, No. M2000-01647-CCA-R3-CD, 2001 WL 1180524, at *10 (Tenn. Crim. App. at Nashville, Oct. 8, 2001), perm. to appeal denied Apr. 1, 2002; State v. Y'vette Vitina Vaden, No. 01C019708-CC-00366, 1998 WL 401718, at *1 (Tenn. Crim. App. at Nashville, Jul. 20, 1998). "Awareness of impending death has been inferred from the language and condition of the declarant, the facts and circumstances surrounding the statement, and medical testimony concerning the seriousness of the victim's condition." State v. Maruja Paquita Coleman, 1997 WL 438169, at *5 (citations omitted). In other words, the law requires only that the declarant believed death was "imminent;" proof that the dying declarant believed that death would come within a specified

number of hours or minutes is not reasonable. Importantly, it is not necessary that the victim die shortly after making the statement to qualify for the hearsay exception as a dying declaration if the requirements of the rule are satisfied. Id.

The appellant asserts that the State presented absolutely no proof that Mr. Mayes had the requisite belief in his own imminent death. We disagree. According to the medical report, the cause of death was determined to be the result of multiple shotgun wounds. Officer Henderson testified that when he arrived, Mr. Mayes was lying in a pool of blood on the carport, had a five-to-six inch hole in his abdomen, said that his injuries were "killing" him, and made the statements about the shooter and his injuries shortly before he died. Given the facts, Mr. Mayes's belief that his death was imminent can be readily inferred. Because the evidence supports the trial court's conclusion that the victim was aware of his impending death at the time he made the statement to Officer Henderson, we cannot say that the evidence preponderates against the trial court's conclusion that Mr. Mayes's statement was a dying declaration. Hence, it was admissible under the hearsay exception for dying declaration and the trial court did not err. See Tennessee Rule of Evidence 804(b)(2). The appellant is not entitled to relief on this issue.

Sufficiency of the Evidence

When a defendant challenges the sufficiency of the evidence, this Court is obliged to review that claim according to certain well-settled principles. A verdict of guilty, rendered by a jury and "approved by the trial judge, accredits the testimony of the" State's witnesses and resolves all conflicts in the testimony in favor of the State. State v. Cazes, 875 S.W.2d 253, 259 (Tenn. 1994); State v. Harris, 839 S.W.2d 54, 75 (Tenn. 1992). Thus, although the accused is originally cloaked with a presumption of innocence, the jury verdict of guilty removes this presumption "and replaces it with one of guilt." State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). Hence, on appeal, the burden of proof rests with the defendant to demonstrate the insufficiency of the convicting evidence. Id. The relevant question the reviewing court must answer is whether any rational trier of fact could have found the accused guilty of every element of the offense beyond a reasonable doubt. See Tenn. R. App. P. 13(e); Harris, 839 S.W.2d at 75. In making this decision, we are to accord the State "the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences that may be drawn therefrom." See Tuggle, 639 S.W.2d at 914. As such, this Court is precluded from re-weighing or reconsidering the evidence when evaluating the convicting proof. State v. Morgan, 929 S.W.2d 380, 383 (Tenn. Crim. App. 1996); State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Moreover, we may not substitute our own "inferences for those drawn by the trier of fact from circumstantial evidence." Matthews, 805 S.W.2d at 779.

In the instant case, the appellant challenges the sufficiency of the evidence. Specifically, the appellant argues that "the question in this case is premeditation" and that the undisputed facts are not sufficient to sustain a conviction for first degree murder. The State disagrees, arguing that there was "overwhelming evidence" that the appellant committed first degree murder.

Tennessee Code Annotated section 39-13-202(a)(1) defines first degree murder in pertinent part as "a premeditated and intentional killing of another." Tennessee Code Annotated section 39-13-202(d) provides:

> As used in subdivision (a)(1) "premeditation" is an act done after the exercise of reflection and judgment. "Premeditation" means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill pre-exist in the mind of the accused for any definite period of time. The mental state of the accused at the time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation.

Tenn. Code Ann.§ 39-13-202(d). Therefore, in order to convict the appellant of his indicted offense, the State was required to prove beyond a reasonable doubt that the defendant killed the victim with "premeditation." "[W]hether premeditation is present is a question of fact for the jury, and it may be inferred from the circumstances surrounding the" commission of the crime. State v. Billy Gene Debow, Sr., No. M1999-02678-CCA-R3-CD, 2000 WL 1137465, at *4 (Tenn. Crim. App. at Nashville, Aug. 2, 2000); see also State v. Jerry Ray Davidson, No. M1998-00105-SC-DDT-DD, 2003 WL 22398392, at *10 (Tenn. Oct. 20, 2003); State v. Bland, 958 S.W.2d 651, 660 (Tenn. 1997); State v. Anderson, 835 S.W.2d 600, 605 (Tenn. Crim. App. 1992). Some relevant factors that tend to support the existence of premeditation include: "the use of a deadly weapon upon an unarmed victim; the particular cruelty of the killing; declarations by the defendant of an intent to kill; evidence of procurement of a weapon; preparations before the killing for concealment of the crime, calmness immediately after the killing," and evidence that the victim was retreating or attempting to escape when killed. State v. Jerry Ray Davidson, 2003 WL 22398392, at *10; Bland, 958 S.W.2d at 660; see also State v. Keough, 18 S.W.3d 175, 181 (Tenn. 2000); State v. West, 844 S.W.2d 144, 148 (Tenn. 1992). "[T]he fact that repeated blows (or shots) were inflicted on the victim is not sufficient, by itself, to establish first-degree murder." State v. Brown, 836 S.W.2d 530, 542 (Tenn. 1992). Additional relevant circumstances include facts about the defendant's prior relationship with and conduct toward the victim, from which the jury may infer a motive for the killing. See State v. Coulter, 67 S.W.3d 3, 48 (Tenn. Crim. App. 2001); see also State v. Sims, 45 S.W.3d 1, 8 (Tenn. 2001) (finding that "establishment of a motive for the killing is another factor from which the jury may infer premeditation").

After a thorough review of the record, we find that there was sufficient evidence introduced at trial to support a finding that the defendant acted with premeditation. Viewing the evidence in the light most favorable to the State, the evidence establishes that the appellant had a motive to rob and kill his uncle; he procured his brother's shotgun; and he waited on his uncle to return home from work late at night. Several witnesses testified that the appellant needed money to pay off his truck in order to prevent repossession and one witness even testified that the appellant owed Mr. Mayes money. Lisa Cox, the appellant's former girlfriend, testified that the appellant was angry with Mr. Mayes and threatened to kill him two weeks prior to the incident. It was well known in the community that Mr. Mayes often carried large sums of cash after locking up his store. On the night

of the incident, the appellant dressed in camouflage and carried a ski mask, rubber gloves and a shotgun. He admitted that he parked over 200 yards away from Mr. Mayes's house so that Mr. Mayes would not see his truck when he got home. The appellant sat on Mr. Mayes's porch with his shotgun waiting for Mr. Mayes to return home. The appellant claimed that he put the rubber glove on his hand "just in case." The glove was recovered at the scene turned inside-out. The appellant also claimed that the ski mask remained in his pocket the entire time and that it must have fallen out when he took his pants off to assess his injuries. The ski mask was found lying on the ground with blood inside it. When Officer Henderson arrived on the scene, Mr. Mayes told him that some "son of a bitch" wearing a ski mask and camouflage stepped out from behind his house, pointed a shotgun at him, and fired. The appellant does not dispute that he shot Mr. Mayes. We conclude that the evidence supports the jury's decision that the appellant committed first degree murder.

Conclusion

After thoroughly reviewing the record before this Court, we conclude that there is no reversible error and accordingly, the judgment of the trial court is affirmed.

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JERRY L. SMITH, JUDGE